

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

LA CARPA CORPORATION,

Plaintiff(s),

Civil No. 09-2014 (DRD)

ELAM BAER, et al.,

Defendant(s).

**ORDER ADOPTING MAGISTRATE JUDGE'S
REPORTS AND RECOMMENDATIONS, DOCKET ENTRIES NO. 29, 30**

Pending before the Court are: (a) *Motion to Dismiss RICO Claims Against ASFI*, Docket No. 13; (b) *Plaintiff Opposition to Defendants Motion to Dismiss with Incorporated Memorandum of Law*, Docket No. 16; (c) *Motion Reiterating Motion to Dismiss RICO Claims Against ASFI and to Strike Immaterial, Impertinent, Scandalous and Baseless RICO Allegations Against ASFI*, Docket No. 20; (d) *Plaintiff Opposition to Defendants Reiterating Motion to Dismiss RICO Claims Against ASFI and Motion to Strike Immaterial an[d] Impertinent, Scandalous and Baseless RICO Allegations*, Docket No. 24; (e) *Motion for Default*, Docket No. 25; and (f) *Mr. Baer's Opposition to La Carpa's Motion for Entry of Default (Docket No. 25)*, Docket No. 26.

These matters were referred to the United States Magistrate Judge López (“Magistrate Judge”) for report and recommendation (Docket entries No. 27 and 28).

On August 10, 2010, the Magistrate Judge entered a *Report and Recommendation*, Docket No. 29, recommending that the motions to dismiss the RICO claims as to American Spaceframe Fabricators LLC (“ASFI”), Docket entries No. 13 and 20), be granted. On August 10, 2010, the Magistrate Judge entered a *Report and Recommendation*, Docket No. 30, recommending that plaintiff’s motion requesting the entry of default against defendant Elam Baer (“Baer”), Docket

No. 25, be denied. As of this date, both reports and recommendations stand unobjection, hence, the Court need only review the record under the "plain error" doctrine.

For the reasons set forth below, the *Reports and Recommendations* issued by the Magistrate Judge, Docket entries No. 29 and 30, are hereby adopted *in toto*.

Standard of Review

The district court may refer dispositive motions to a United States Magistrate Judge for a report and recommendation. 28 U.S.C. § 636(b)(1)(B); Rule 72(b) of the Federal Rules of Civil Procedure ("Fed.R.Civ.P."); Local Civil Rule 72(a) of the Local Rules of the United States District Court for the District of Puerto Rico ("L.Civ.R.").

"Absent objection, ... [a] district court ha[s] a right to assume that [the affected party] agree[s] to the magistrate's recommendation." *Templeman v. Chris Craft Corp.*, 770 F. 2d 245, 247 (1st Cir. 1985), *cert. denied*, 474 U.S. 1021 (1985). Moreover, "failure to raise objections to the Report and Recommendation waives that party's right to review in the district court, and those claims not preserved by such objections are precluded on appeal." *Davet v. Maccarone*, 973 F. 2d 22, 30-31 (1st Cir. 1992).

In the instant case, no objections to the Magistrate Judge's *Reports and Recommendations*, Docket entries No. 29 and 30 have been filed. Thus, in order to accept the unopposed *Report and Recommendation*, the Court needs only satisfy itself by ascertaining that there is no "plain error" on the face of the record. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1419 (5th Cir. 1996)(*en banc*)(extending the deferential "plain error" standard of review to the unobjection legal conclusions of a magistrate judge); *Nettles v. Wainwright*, 677 F.2d 404, 410 (5th Cir. 1982)(*en banc*)(appeal from district court's acceptance of unobjection findings of magistrate judge reviewed

for "plain error"); *Nogueras-Cartagena v. United States*, 172 F.Supp.2d 296, 305 (D.P.R. 2001)(“Court reviews [unopposed] Magistrate’s Report and Recommendation to ascertain whether or not the Magistrate’s recommendation was clearly erroneous”)(adopting the Advisory Committee note regarding Fed.R.Civ.P 72(b)); *Garcia v. I.N.S.*, 733 F.Supp. 1554, 1555 (M.D.Pa. 1990)(“when no objections are filed, the district court need only review the record for plain error”).

After a careful analysis, the Court finds no "plain error" and agrees with the Magistrate Judge's conclusions reached on both *Reports and Recommendations*, Docket No. 29 and 30.

Analysis

As stated above, and in absence of “plain error,” the Court **ACCEPTS, ADOPTS and INCORPORATES** by reference, the Magistrate Judge’s *Report and Recommendation*, Docket No. 29, to the instant Order. The Court agrees *in toto* with the Magistrate Judge’s conclusion that “[b]ecause plaintiff has conceded that it is not asserting a RICO claim against ASFI, that claim, to the extent it is asserted, should be dismissed with prejudice.” *Report and Recommendation*, Docket No. 29, page 2. “To the extent the language on the amended complaint appears to implicate any RICO cause of action against ASFI, such language should be stricken.” *Id.* “Wherefore, the motions to dismiss the RICO claims against ASFI, Docket Nos. 13 and 20) should be granted.” *Id.* The Court agrees and adopts the recommendation of the Magistrate Judge.

Likewise, the Court agrees *in toto* with the Magistrate Judge’s conclusion that “plaintiff’s motion for entry of default (Docket No. 25) be denied.” *Report and Recommendation*, Docket No. 30, page 2. The Magistrate Judge found that since plaintiff amended the complaint, as a matter of right, on December 16, 2010, Docket No. 17, and Baer renewed his motion to dismiss on January 8, 2010, Docket No. 20, the motion to entry default is not warranted. “A motion to dismiss

extends the period allowed to answer a complaint until 14 days after the court has ruled on the motion. Fed.R.Civ.P. 12(a)(4)." *Report and Recommendation*, Docket No. 30, page 2. "Accordingly, Baer's answer to the amended complaint is not yet due." *Id.* The Court agrees and adopts the recommendation of the Magistrate Judge.

Conclusion

For the reasons stated above, the Court finds that there is **no plain error** in the Magistrate Judge's *Reports and Recommendations*, Docket entries No. 29 and 30, hence, the *Reports and Recommendations* are hereby adopted *in toto*.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 30th day of September, 2010.

s/Daniel R. Domínguez
DANIEL R. DOMINGUEZ
U.S. District Judge